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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: Reply of Verizon in Support of Objections to Certain Broadview Networks
Executives Having Access to Confidential Materials in WC Docket No. 04-
313 and CC Docket No. 01-338.**

Dear Ms. Dortch:

On October 4, the Verizon telephone companies (“Verizon”) objected to two executives of Broadview Networks (“Broadview”) having access to confidential materials in the above-referenced dockets. On October 6, Broadview’s counsel responded with a letter stating, without any evidentiary support, that the executives in question, Rebecca H. Sommi and Michael Hou, are not involved in competitive decision-making.¹ None of the arguments in Broadview’s opposition is well founded.

First, far from assuaging Verizon’s concerns, Broadview’s letter confirms that Ms. Sommi and Mr. Hou are involved in business decisionmaking. “In his capacity as Sr. Vice President, Mr. Hou is responsible for Broadview’s wholesale service business.” *Id.* at 2. “In her capacity as the Vice President of Operations and Support, Ms. Sommi is involved in a wide range of activities” beyond her responsibility for regulatory matters. *Id.* The opportunity for these individuals to use Verizon’s confidential materials for Broadview’s competitive business advantage is therefore essentially undisputed. These are precisely the kinds of businesspeople who should be shielded from the competitively sensitive information of other telecommunications companies.

¹ See Letter to Marlene H. Dortch, Secretary, FCC, from Jennifer H. Kashatus, Kelley Drye & Warren, LLP, WC Docket No. 04-313, CC Docket No. 01-338 (FCC filed Oct. 6, 2004).

Furthermore, Broadview has submitted no evidence of any kind in support of its claim that these executives are not involved in competitive decisionmaking. It is well established that “[t]he mere assertion that they do not participate, without any type of substantiation, is insufficient.”² This is particularly true where, as here, the assertion is plainly inconsistent with the company’s own description of their responsibilities. Worse yet, Broadview has neglected to submit *any* affidavit or declaration in response to Verizon’s objections and thus has provided no evidentiary basis for the Commission to grant these high-ranking executives access to competitors’ confidential information.

That Ms. Sommi and Mr. Hou have signed acknowledgements of confidentiality is irrelevant. As case after case has recognized, it is simply not possible for people to forget information they have learned in legal or regulatory proceedings when carrying out their other job duties. *See, e.g., United States v. Dentsply Int’l, Inc.*, 187 F.R.D. 152, 159-60 (D. Del. 1999) (restricting disclosure of confidential information to persons involve in “competitive decision making” and explaining that that the touchstone for the inquiry is whether the individual “would have a difficult time compartmentalizing his knowledge” (internal quotation marks omitted)). In the present case, it would obviously be extremely difficult for Ms. Sommi and Mr. Hou to set aside what he they have learned from viewing confidential documents in this proceeding when performing their other wide-ranging business duties.

Finally, Broadview’s speculation that Ms. Sommi and Mr. Hou would have had access to “similar” confidential information in recent state proceedings is likewise irrelevant. Verizon does not concede that the confidential material being disclosed in the present dockets has been disclosed elsewhere. Nor would it be appropriate to grant access to confidential materials in violation of the Protective Order in this case simply because individuals had erroneously been granted access to similar materials in other fora.

Given Broadview’s description of the wide-ranging managerial responsibilities of Ms. Sommi and Mr. Hou, and absent any evidence in the record indicating that are not involved in competitive decision-making, these individuals should not be permitted to have access to confidential materials in these proceedings.

Respectfully submitted,
/s/ J.C. Rozendaal
J.C. Rozendaal
Counsel for the Verizon telephone companies

cc: Jennifer M. Kashatus, Kelley Drye & Warren, LLP (via facsimile and overnight delivery)

² Order Ruling on Joint Objections, *Application of Worldcom, Inc., and MCI Communications Corp. for Transfer of Control*, 13 FCC Rcd 13478, ¶ 2 (1998).